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ZELASKIEWICZ, CHRYSSTINA E				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/575,964

**Applicant(s)**

BALDISCHWEILER ET AL.

**Examiner**

CHRYSTINA ZELASKIEWICZ

**Art Unit**

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **Acknowledgements**

1. This action is in reply to the Amendment filed on September 6, 2011.
2. Claims 1-7 and 9-27 are pending.
3. Claims 1-7 and 9-27 are examined.
4. This Office Action is given Paper No. 20111108 for references purposes only.

### **Claim Rejections - 35 USC § 112, 2<sup>nd</sup> paragraph**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 16 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Claim 16 recites the limitation "transmitting from the intermediate carrier to the personal electronic payment device data on the *functionality required* for transmitting a data record from the personal electronic payment device or a personal device to the intermediate carrier." This phrase is vague and indefinite because it is unclear what "functionality required" refers to: does this refer to functionality (hardware or software) of the personal electronic payment device and/or intermediate carrier. Furthermore, does "functionality required" actually require that a data record transmit from the personal electronic payment device

or personal device to the intermediate carrier; and if so, does the receiving limitation in claim 1 ("at a first time... device") already fulfill said requirement. Therefore, for purposes of applying the prior art, Examiner will interpret the phrase as "transmitting from the intermediate carrier to the personal electronic payment device data on transmitting a data record from the personal electronic payment device or a personal device to the intermediate carrier."

b. Claim 20 recites the limitation "the personal means of payment." There is insufficient antecedent basis for this limitation in this claim. Specifically, does this limitation refer to "a personal means of payment" (i.e. new structure) or to "the personal electronic payment device" (existing structure of claim 17). In order to compare the claim with the prior art (i.e. for prior art purposes only) and thus to provide compact prosecution, Examiner will interpret the phrase as "the personal electronic payment device."

7. Examiner finds that because the claims are indefinite under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claims are indefinite, the claims are construed and the prior art is applied as much as practically possible.

#### **Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, 6-7, and 9-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Luzzatto (US 7,590,602) in view of Tuttle (US 6,013,949).

Claims 1, 17

10. Luzzatto discloses the following limitations:

- c. at a first time (t1), receiving a data record (data packets, see C7 L10-42) assigned to the service to be paid (transaction, see C7 L10-42) on an electronic intermediate carrier (data storage medium of user, see C7 L10-42) from an owner's personal electronic payment device (Internet terminal of user, see C7 L51-67), wherein the electronic intermediate carrier is configured in a way such that the electronic intermediate carrier (data storage medium, see C7 L51-59) is physically separate and independent (located away from the Internet terminal of the user, see C7 L51-59) from the owner's personal electronic payment device;
- d. determining that the service was rendered correctly (service received, C8 L40-53);
- e. deleting (deleting, see C7 L10-42) or invalidating the data record (data packets, see C7 L10-42) completely on the electronic intermediate carrier (data storage medium of user, see C7 L10-42) upon correct rendition (verification

obtained, see C7 L10-42, C8 L40-53) of the service, so as to prevent the data record from being used several times (data packets involved in transaction deleted or marked as spent, see C7 L10-42) for payment transactions.

11. Luzzatto does not disclose the following limitations:

f. At a second time... payee.

12. Tuttle teaches the following limitations:

g. at a second time (t2) (upon reaching shipment destination, see C6 L35-49) which is later than the first time (t1), checking the data record (received data, see C6 L35-49) on the electronic intermediate carrier (RFID chip, see C6 L35-49) using a receiving device of the payee (interrogator, see C6 L35-49).

13. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the checking of the data record of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Checking the data record will ensure that the item of shipment is most ensuredly and efficiently put in the hands of the desired recipient at the earliest possible time (Tuttle C6 L35-49).

14. Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the checking of the data record of Tuttle since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same

function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. Checking the data record will ensure that the item of shipment is most ensuredly and efficiently put in the hands of the desired recipient at the earliest possible time (Tuttle C6 L35-49).

#### Claim 2

15. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- h. transmitting (transmitting, see C7 L10-42) the data record or data derived (new data packets, see C7 L10-42) therefrom from the electronic intermediate carrier to the payee (second user, see C7 L10-42).

#### Claim 3

16. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- i. securing the data record cryptographically (encrypted, see C7 L50-60).

#### Claim 4

17. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

j. the data record depends on at least one of individual data (unique identifier, see C6 L10-16) of the electronic intermediate carrier and a consecutive character string (sequence of symbols, see C9 L25-30).

Claim 6

18. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

k. the data record depends on personal data (temporary user identification, see C18 L4-17) of the owner of the personal electronic payment device.

Claim 7

19. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

l. the data record represents at least one amount of money or at least one unit of value (value, see C6 L17-21).

Claim 9

20. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

m. the electronic intermediate carrier is not in the possession (can be handed over in person, see C13 L60 - C14 L5) of the owner of the personal electronic payment device at the second time (t2).



Claim 10

21. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- n. the data transmission is effected contactlessly (e.g. downloading, see C8 L17-20) at least one of the first time (t1) and the second time (t2).

Claim 11

22. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto does not disclose the following limitations:

- o. Using... mail.

23. Tuttle teaches the following limitations:

- p. using the cashless payment transaction for paying postage for mail (postage stamps and mailing labels, see C2 L18-28).

24. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the postage stamps of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Using the transaction for paying postage for mail allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

Claim 12

25. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto does not disclose the following limitations:

q. The intermediate... mail.

26. Tuttle teaches the following limitations:

r. the intermediate carrier (RFID stamp, see C2 L28-54) is fastened detachably to mail (mail, see C2 L28-48).

27. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the postage stamps of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Having the carrier fastened to mail allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

Claim 13

28. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto does not disclose the following limitations:

s. Information... carrier.

29. Tuttle teaches the following limitations:

t. information on at least one of the time and place of the delivery (destination address, see C2 L28-48) of the mail is stored in the electronic intermediate carrier.

30. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the destination address of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Storing information on the time and place of the delivery allows for electrically powered postage stamps and mailing labels (Tuttle C2 L18-28).

#### Claim 14

31. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

u. visualizing information (amount contained, see figure 5, C14 L21-43) in connection with the data record on the intermediate carrier.

#### Claim 15

32. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- v. fastening the intermediate carrier detachably to an object (CD-ROM or bar code placed on object, see C6 L22-26).

Claim 16

33. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- w. transmitting from the intermediate carrier to the personal electronic payment device data on the functionality (see C12 L10-17) required for transmitting a data record from the personal electronic payment device or a personal device to the intermediate carrier.

Claim 18

34. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto does not disclose the following limitations:

- x. The electronic... transponder.

35. Tuttle teaches the following limitations:

- y. the electronic intermediate carrier is formed as a transponder (RFID chip, see C6 L35-49).

36. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the RFID chip of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto

C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Having the electronic intermediate carrier as a RFID chip allows for portable communication means (Tuttle C6 L35-49).

Claim 19

37. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- z. the electronic intermediate carrier is set up for repeated transmission (fractional payments, see C8 L40-53) of data records.

Claim 20

38. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

- aa. the functionality required for transmitting a data record from the personal means of payment or a personal device to the intermediate carrier is stored as an application (software Agent, see C14 L6-60) on the electronic intermediate carrier.

Claim 21

39. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

bb. the electronic intermediate carrier has a display device (amount contained, see figure 5, C14 L21-43) for visualizing information in connection with a data record.

Claim 22

40. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto does not disclose the following limitations:

cc. The personal... transponder.

41. Tuttle teaches the following limitations:

dd. the personal device is an intelligent device having a reading device (interrogator, see C6 L35-49) for near field communication with a transponder.

42. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto with the interrogator of Tuttle because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); and 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27). Having the interrogator allows for portable communication means (Tuttle C6 L35-49).

Claim 23

43. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

ee. the personal electronic payment device is a mobile telephone (inherent, connected through cellular telephone network, see C11 L45-67).

Claim 24

44. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

ff. the personal electronic payment device is formed as a chip card (smart card, see C7 L60-67), or as a security module of a mobile telephone.

Claim 25

45. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

gg. the receiving device has a checking device (database, see C20 L52-67) as well as at least one additional component which provides reference information (sum corresponds to required sum, see C20 L52-67) for checking a data record.

Claims 26, 27

46. Luzzatto in view of Tuttle discloses all the limitations above. Furthermore, Luzzatto discloses the following limitations:

hh. prior to the first time (t1), loading the data record with data (information on its value, see C6 L10-16), programs, keys, or a combination thereof from a previous owner initiated log in with the payee.

47. Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over Luzzatto, in view of Tuttle, and further in view of Sakamura et al. (US 2004/0059685).

Claim 5

48. Luzzatto in view of Tuttle discloses all the limitations above. Luzzatto in view of Tuttle does not disclose the following limitations:

ii. Encrypting... payee.

49. Sakamura teaches the following limitations:

jj. encrypting the data record with a public key of the payee (public key of server, see [0044]).

50. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the electronic currency of Luzzatto, in view of Tuttle, with the public key encryption of Sakamura because 1) a need exists for an electronic currency system that can be used in a simple manner by the general public in transactions just as one uses bills or checks (Luzzatto C5 L1-11); 2) a need exists for an improved RFID device that is not expensive but highly reliable (Tuttle C2 L1-27); and 3) a need exists for an IC card that can be used in an authentication method (Sakamura [0010]). Using



the public key of the server will ensure secure communication between parties (Sakamura [0044]).

### **Response to Arguments**

51. Applicant argues that the prior art does not teach determining that the service was rendered correctly, and deleting or invalidating the data record (RCE p 10-15).

kk. This argument is moot in light of the new art above. Luzzatto discloses determining that the service was rendered correctly (service received, C8 L40-53). Luzzatto also discloses deleting (deleting, see C7 L10-42) or invalidating the data record (data packets, see C7 L10-42) completely on the electronic intermediate carrier (data storage medium of user, see C7 L10-42) upon correct rendition (verification obtained, see C7 L10-42, C8 L40-53) of the service, so as to prevent the data record from being used several times (data packets involved in transaction deleted or marked as spent, see C7 L10-42) for payment transactions.

### **Claim Interpretation**

52. Unless expressly noted otherwise by Examiner, Examiner maintains her position on claim interpretation as noted in the June 6, 2011 Non Final Office Action, Paragraph Nos. 61-65 (Paper No. 20110531).

53. After another careful review of the original specification and unless expressly noted otherwise by Examiner, Examiner maintains her position that Applicant is not his own lexicographer. See MPEP § 2111.01 IV.

54. After review of the September 6, 2011 Claim Amendments, Examiner finds that because the examined claims recite neither "step for" nor "means for," the examined claims fail Prong (A) as set forth in MPEP §2181 I. Because all examined claims fail Prong (A), Examiner concludes that all examined claims do not invoke 35 U.S.C. §112, 6<sup>th</sup> paragraph. See also Ex parte Miyazaki, 89 USPQ2d 1207, 1215-16 (B.P.A.I. 2008) (precedential).

55. Note, in this case claim 1 is a method claim that recites the limitation "at a second time (t2) which is later than the first time (t1), checking the data record on the electronic intermediate carrier using a receiving device of the payee." Based upon the broadest reasonable interpretation, Examiner finds that a "receiving device" is hardware. Thus, Examiner interprets claims 1-7, 9-16, and 26 as necessarily requiring a machine because a receiving device requires use of a machine.

56. Note, in this case claim 17 is a system claim that recites the limitation "a personal electronic payment device." Based upon the broadest reasonable interpretation, Examiner finds that a "personal electronic payment device" is hardware. Thus, Examiner interprets claims 17-25 and 27 as necessarily requiring a machine because a personal electronic payment device requires use of a machine.

57. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), Examiner finds that the reference by White, Ron, "How Computers

Work", Millennium Ed., Que Corporation, Indianapolis, IN, 1999, is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. This reference is cited in its entirety. Moreover, because this reference is directed towards beginners (see *e.g.* "User Level Beginning..."), because of the reference's basic content (which is self-evident upon examination of the reference), and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), Examiner finds that this reference is primarily directed towards those of low skill in this art. Because this reference is directed towards those of low skill in this art, Examiner finds that one of ordinary skill in this art must, at the very least, be aware of and understand the knowledge and information contained within this reference.

### Conclusion

58. Applicant's amendment filed on September 6, 2011 necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

59. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

60. Because this application is now final, Applicant is reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112, 1<sup>st</sup> paragraph written description and enablement, §112, 2<sup>nd</sup> paragraph indefiniteness, and §102 and §103, prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

61. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from Examiner should be directed to Chrystina Zelaskiewicz whose telephone number is 571.270.3940.

Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at 571.272.6779.

62. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

/Chrystina Zelaskiewicz/  
Examiner, Art Unit 3621  
November 8, 2011